REMARKS

In response to the Final Office Action of July 1, 2008, in conjunction with the accompanying request for continued examination (RCE), reconsideration of the application in view of the foregoing amendment and the following remarks is respectfully requested.

Applicant respectfully calls to the Examiner's attention that the Attorney Docket Number has been changed to 1750-3 and that the Applicant is represented by a new attorney.

Claims 17, 18, 20-25, 28, 29, 32-34, 36 and 41 are pending in the application. Prior to addressing the rejections over the prior art, Applicant respectfully calls to the Examiner's attention that the two paragraphs on page 24, lines 15 to 33, have been amended to correct obvious typographical errors wherein "member" has replaced the obvious error "membe" and "umbilicus" has replaced the obvious error "umblicus". No new matter has been added by the amendment to the specification.

In addition, Applicant respectfully calls to the Examiner's attention that Applicant has amended claims 17 and 21 to claim all patentable subject matter disclosed in the specification and drawings that the Applicant has a right to claim, specifically FIG. 15 and the specification on page 24, lines 15 to 33, wherein the following is disclosed:

> Cannula and instrument holder 226 has a sidewall 237 that is substantially rigid in a region about plate member 224 and flexible at least in a distal flange region (inside the patient) spaced from plate member 224. Such a design facilitates cannula insertion in the abdominal wall opening and overall structural integrity of the system while under deforming external pressure (rigid part), and provides an improved degree of freedom, particularly in the lateral planes, within the system (flexible part).
>
> Plate members 182 and 224, as well as walls 186 and 238 of holders 180 and 226 are flexible, but can acquire a semi-rigid form upon filling with inflation fluid. The flexibility of the holders 180, 226 means that these devices can be rolled or folded into a compact, deflated configuration for insertion into the umbilicus or other abdominal aperture. FIG. 15 shows such a compacted insertion configuration of an instrument holder 240 having port members 242. For assisting in the deployment of the instrument holder 240, tongs 244 may be used. Tongs 244 have a pair of handles 246 and a pair of substantially cylindrical jaw elements 248. The compacted instrument holder 240 is held between jaw elements 248 for

> insertion into the umbilicus. The compacted holder is held by a finger or instrument in place, while tongs 244 are opened slightly (arrow 247) and pulled (arrow 249) to separate jaw elements 248 from the holder 240. The holder 240 is then inflated in the umbilicus to the use configuration.

Thus, based on the foregoing support found in the specification and drawings, claims 17 and 21 have been amended to add the limitations of "..said holder assembly having an insertion configuration for insertion of said holder assembly through an incision in a patient for at least partial insertion of said instrument holder assembly into a patient cavity, and an in use configuration for use of said instrument holder assembly for access to said patient cavity,.." that the plate member is a flexible member and the wall member is at least partially flexible, and "wherein the flexible member and the at least partially flexible wall are configured so as to enable the instrument holder assembly, for the insertion configuration, to be folded into a compact configuration for the insertion of said holder assembly at least partially through the incision in a patient."

No new matter has been added by the amendments to claims 17 and 21.

Based on the foregoing, claims 18, 20, 22-25, 29 and 41 have been amended to replace "plate member" with "flexible member" to provide proper antecedent basis. Claim 41 has also been amended to correct an obvious typographical error.

Claims 28 and 33 have been canceled without prejudice or disclaimer. Applicant has not abandoned the subject matter of claims 28 and 33 and reserves the right to file a continuation application directed thereto.

Again, Applicant has added new claims 42-45 and 47-50 to claim all patentable subject matter disclosed in the drawings and specification that the Applicant has a right to claim, specifically FIG. 12 and page 23, lines 4-11, wherein the following is disclosed:

> Holder 180 is an inflatable unit, both plate 182 and wall 186 being at least partially hollow for receiving a pressurizing fluid such as air. To that end, a tube 204 is connected to holder 180 for the delivery of air from a pressure source such as a syringe (not illustrated). A valve 206 is provided

> on tube 204. A second tube 208 with a valve 210 is connected to holder 180 for providing a channel for the conveyance of an insufflation gas such as carbon dioxide from a reservoir thereof (not shown) to the patient. An aperture 212 is provided along an inner surface 214 of wall 186 for enabling the delivery of the insufflation gas to the patient via tube 208.

Based on the foregoing support found in the specification and drawings and in addition the previously cited FIG. 15 and the specification on page 24, lines 15 to 33, new claims 42-45 and 47-50 have been added to recite that the instrument holder assembly is configured to be inflatable and deflatable (claims 42 and 47); that it is inflatable when in the insertion configuration to assume the in use configuration (claims 43 and 48); the at least partially flexible wall is substantially rigid in a region about the flexible member and flexible at least in a distal region of the wall inside the patient cavity that is spaced from the flexible member (claims 44 and 49); and configured wherein, when the instrument holder assembly is in the in use configuration, the distal region of the wall is enabled to be inside the patient cavity (claims 45 and 50).

No new matter has been added by the introduction of new claims 42-45 and 47-50.

New claim 46 has been added to depend from claim 17. Claim 46 recites limitations of claim 17 prior to the current amendment. Thus no new matter has been added by the introduction of new claim 46.

In order for the Applicant to claim all patentable subject matter disclosed in the drawings and specification that the Applicant has a right to claim, new claim 51 has been added. New claim 51 recites all of the limitations of previously canceled claim 40 with the additional limitation that the port elements are tapered and funnel-shaped. Support for claim 51 is found in FIG. 16 and in the specification on page 25, lines 1-7, wherein the following is disclosed:

> FIG. 16 depicts another instrument or cannula holder 250 for the insertion of multiple laparoscopic instruments into a patient through a single aperture in the abdominal wall of the patient. Instrument or cannula holder 250 includes a flared annular body member 252 provided at one end with a plurality of tapered or funnel-shaped introduction ports 254. Ports 254 include apertures 256 for the introduction of laparoscopic instruments as discussed hereinabove.

Thus no new matter has been added by the introduction of new claim 51.

Rejections Over the Prior Art

The Examiner has rejected claims 17-18, 20-24,, 28-29, 32-33, 36 and 41 under 35 U.S.C. §103(a) allegedly as being unpatentable over U.S. Patent No. 6,042,573 to Lucey in view of U.S. Patent No. 5,540,648 to Yoon.

The Examiner has rejected claims 25 and 34 under 35 U.S.C. §103(a) allegedly as being unpatentable over U.S. Patent No. 6,042,573 to Lucey in view of U.S. Patent No. 5,540,648 to Yoon and further in view of U.S. Patent No. 6,238,373 to de la Torre et al.

In response, Applicant respectfully submits that neither Lucey nor Yoon, taken alone or in combination, disclose, teach or suggest the limitations of claim 17 or of claim 21 of an instrument holder assembly for laparoscopic surgical operations, said holder assembly having an insertion configuration for insertion of said holder assembly through an incision in a patient for at least partial insertion of said holder assembly into a patient cavity, and an in use configuration for use of said instrument holder assembly for access to said patient cavity, ... wherein the flexible member and the flexible wall are configured so as to enable the instrument holder assembly, for the insertion configuration, to be folded into a compact configuration for the insertion of said holder assembly at least partially through the incision in a patient.

Although the bladder 23 of Lucey is inflatable, it is only disclosed in col. 3, lines 27-30, cited in part by the Examiner, that the bladder 23 fits snugly within, and is bonded to the tube 24. Thus, there is no teaching or suggestion in Lucey of an insertion configuration for insertion of said holder assembly through an incision in a patient nor is there any teaching or suggestion of the instrument holder assembly, for the insertion configuration, to be folded into a compact configuration for the insertion of said holder assembly at least partially through the incision in a patient, as recited *inter alia* by claims 17 and 21.

Although Yoon discloses in col. 4, lines 10-28, cited by the Examiner, that body 12 of

FIG. 1 is made of a deformable, shape-retaining material, i.e., once deformed, the material retains the deformed shape, Yoon discloses only that medical instruments of various sizes are inserted in passage 20 with the resilient material of tubular extension 22 gripping the medical instruments. Thus, there is no teaching or suggestion in Yoon of an insertion configuration for insertion of said holder assembly through an incision in a patient nor is there any teaching or suggestion of the instrument holder assembly, for the insertion configuration, to be folded into a compact configuration for the insertion of said holder assembly at least partially through the incision in a patient, as recited *inter alia* by claims 17 and 21.

Consequently, neither Lucey nor Yoon, taken alone or in combination, disclose, teach or suggest the limitations of claims 17 and 21. Even if one of ordinary skill in the art were somehow motivated to combine the teachings of Lucey with the teachings of Yoon, the hypothetical device resulting from such a combination would not yield the instrument holder assembly for laparoscopic surgical operations recited by claims 17 or 21, nor the advantages thereof.

Applicant respectfully submits that the rejection of claims 17 and 21 under 35 U.S.C. §103(a) allegedly as being unpatentable over U.S. Patent No. 6,042,573 to Lucey in view of U.S. Patent No. 5,540,648 to Yoon should be withdrawn.

In that claims 18, 20, 22-24, 29, 32, 36 and 41-46 depend directly or indirectly from claim 17, claims 18, 20, 22-24, 29, 32, 36 and 41-46 contain all of the limitations of claim 17. Therefore, for at least the reasons that claim 17 is allowable, claims 18, 20, 22-24, 29, 32, 36 and 41-46 are allowable. As a result, Applicant respectfully submits that the rejection of claims 18, 20, 22-24, 29, 32, 36 and 41 under 35 U.S.C. §103(a) allegedly as being unpatentable over U.S. Patent No. 6,042,573 to Lucey in view of U.S. Patent No. 5,540,648 to Yoon should be withdrawn.

In that claims 47-50 depend directly or indirectly from claim 21, claims 47-50 contain all of the limitations of claim 21. Therefore, for at least the reasons that claim 21 is allowable, claims 47-50 are allowable.

In that claims 25 and 34 contain all of the limitations of claim 17, for at least the

reasons that claim 17 is allowable, claims 25 and 34 are also allowable. As a result, Applicant respectfully submits that the rejection of claims 25 and 34 under 35 U.S.C. §103(a) allegedly as being unpatentable over U.S. Patent No. 6,042,573 to Lucey in view of U.S. Patent No. 5,540,648 to Yoon and further in view of U.S. Patent No. 6,238,373 to de la Torre et al. should be withdrawn.

With respect to new claim 51, in the Office Action mailed on July 17, 2007, the Examiner rejected claim 40 under 35 U.S.C. 103(a) allegedly as being unpatentable over U.S. Patent No. 6,551,270 to Bimbo et al.

The Examiner asserts that Bimbo et al. disclose a laparoscopic instrument or cannula holder comprising: an annular body member; and a plurality of funnel-shaped port elements connected to said body member and extending in a common direction therefrom (see FIGS. 3-11).

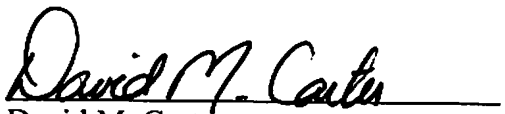
Applicant respectfully maintains that the access openings 22, 24 in FIGS. 3-7 and 72, 74 in FIGS. 8-11 of the Bimbo et al. reference are of a uniform diameter and are not tapered funnel-shaped port elements, as recited by claim 51. The tapered funnel-shaped port elements recited by claim 51 are advantageous in that surgical instruments inserted therethrough are thus provided with more maneuverability and are less likely to become inadvertently stuck in position within the tapered port elements.

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of all pending claims, i.e., Claims 17, 18, 20-25, 29, 32, 34, 36 and 41, and new claims 42-51, are earnestly solicited.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicant's undersigned representative at the number indicated below.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. **50-2140**.



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